Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No.177 of 2004

United India Insurance Company Ltd.,
Divisional Office, through its Branch Manager,
District Hardwar

..... Appellant

Versus

(1) Rahul S/o Mahendra aged about 12 years, through its natural guardian Smt. Shimla W/o Manendramata R/o Village Reta Nangla Police Station District Muzaffarnagar
(2) Intezar S/o Masoom Ali R/o Village Bhagtanpur Abidpur@Ibrahimpur P.S. Pathari, Distt. Hardwar
3. Naresh Kumar S/o Misri Lal, R/o Hobi Family Chowk, Railway Road, Jwalapur, Distt. Hardwar

..... Respondents

.....

Sri D.S. Patni, learned counsel for the appellant.
None appeared for the claimants/respondents.

Date: July 3, 2006

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 20.04.2004 passed by the Motor Accident Claims Tribunal/Addl. District Judge, Roorkee, Distt. Hardwar in Motor Accident Claim Case No.123 of 2002, whereby the appellant-New India Assurance Company has been directed to pay Rs.3,30,000/- as compensation to the claimants alongwith interest at the rate of 6% per annum.

2- Brief facts of the case giving rise to this appeal are that on 20.6.2002 at 3:30 p.m. the claimant/Respondent No.1 was sleeping on a cot alongwith his sister at Ganesh Bhatta, Tikola Kalan, P.S.

Manglaur and suddenly a Truck bearing No.USP-7229 which was being driven by its driver Intazar S/o Masoom rashly and negligently, hit seriously Amrita and Rahul and got them injured. It was alleged that an amount of Rs.50,000/- had been spent in the treatment of Rahul and he was facing permanent disability and hence a claim petition for compensation to the tune of Rs.3,00,000/- was filed.

3- Opp. Party No.1- Intezar did not file any written statement, hence an ex-parte order was passed against him.

4- Opp. Party No.2- Naresh Kumar filed its written statement and submitted that the accident shown on 20.6.2002 is a false story. Rahul –claimant is shown to be sleeping at the side of the road which itself shows his carelessness. It was also alleged that the claimant is not having any licence for installing any hut no certificate was produced and the amount claimed was exorbitant. It was also claimed that an ordinary man cannot bear the amount of Rs.50,000/- and the amount claimed is excessive. The truck in question was insured at the time of accident and the claim deserves to be dismissed. It was also alleged that if the court reach to the conclusion that if amount is to be paid as compensation, then only the insurance company is liable to pay the same.

5- Opp. Party No.3- Insurance Company submitted that claim is not maintainable. The vehicle in question was insured at the date of accident. It was alleged that the there is collusion between the claimant and the Truck owner, hence the right of insurance company is safe. The driver of the truck was not having valid licence at the time of accident and the necessary papers of the truck were not found at the time of

accident, hence insurance company is not liable to pay any compensation. It was also alleged that if any incident had occurred, then it has happened for some technical fault hence insurance company is not liable to pay any compensation and the claim deserves to be dismissed. Apart from this, all the contents of the claim petition were refuted by the insurance company.

6- On the pleadings of the parties, the Tribunal framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling Aggrieved, the Opp.party No.3- Insurance Company has come up in this appeal.

7- The learned counsel for the appellant submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor vehicles Act, 1988 and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. The Insurance Company has moved application for permission under Section 170 of the aforesaid Act. The Tribunal passed the order dated 20.09.2003 granting permission to the Insurance Company to contest the case. In this case, the owner of the offending truck has contested the case before the Tribunal. The Tribunal has not given any finding that there has been collusion between the owner and the claimants. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others,***

reported in (2002) 7, Supreme Court Cases, Page 456. in that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, the contention raised by the learned counsel for the appellant is not tenable and has to be ignored outright.

8- Learned counsel for the appellant further submitted that the Tribunal has erred in awarding a sum of Rs.50,000/- as medical expenses despite the fact that the claimant had submitted medical bills of Rs.7000/- only and hence the Tribunal has wrongly awarded a sum of Rs.50,000/-.

9- The claimant submitted the medical bills of Rs.7,000/- before the court below in which the fees of doctors, transportation expenses, stay expenses at Meerut and the amount of medical tests were not included. Further, no receipts were submitted with regard to the x-ray charges and necessary investigations. In this regard, the claimant submitted before the Tribunal that the Doctors and Nursing Owners do not give the vouchers/bills of expenses and further being an illiterate lady, it was not possible for her to arrange all those document. Hence, the Tribunal while dealing with this point has recorded a finding that there is no error in the statement of claimant that she had spent a sum of Rs.50,000/- in the medical treatment of her son. The Tribunal after relying on the case of *"Rama and others Vs.*

State of Rajasthan, AIR 2002 S.C. page 1814" has recorded a finding that a sum of Rs.50,000/- would be appropriate to award towards medical treatment because the injured has lost both of his legs and further treatment was also required.

10- Furthermore, the Tribunal has held that the claimant being minor was only 12 years of age at the time of accident and he has become hundred percent disabled as his both the legs became useless. The Tribunal awarded the compensation to the claimant on the basis of notional income. Even otherwise on merit, the compensation awarded by Tribunal is just and proper and we do not find any infirmity or illegality in the judgment impugned.

11- In view of the aforesaid discussions, the appeal has not merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. The amount, if deposited in the appeal, shall be remitted to the Tribunal concerned.

(B.S.Verma,J.) **(P.C.Verma,J.)**

Rajeev Dang